

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5529 OF 2009

Mrs. Prabhavati Ramgarib B.)	
Adult, aged 65 years, Indian)	
Inhabitant, residing at Gram Gumsai)	
Ganj, Thane Road, Kirane Ki Dukan,)	
Post. Gumsai Ganj, Dist. Faizabad,)	
(U.P.))	... Petitioner

Versus

Divisional Railway Manager,)	
Western Railway Manager,)	
Mumbai Central, Mumbai – 400008.)	... Respondent

Mr. Arshad Shaikh with Mr. V.M. Parkar for the petitioner.

Mr. Arjun H. Patil for the respondent.

CORAM: S.J. VAZIFDAR, J.

DATED : 4TH FEBRUARY, 2010.

ORAL JUDGMENT. :

1. The Petitioner has sought a writ of certiorari to quash and set aside the order of the Central Government Industrial Tribunal and

Labour Court dismissing his application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”).

2. The case, in a nutshell, is this. In the Petitioner’s deceased husband’s earlier application also under Section 33-C(2), the Respondent was, by an order dated 30th September, 1992, directed to pay him a sum of Rs.65,781/-. The Respondent paid the same almost eleven years later, on 14th March, 2003, after dragging the Petitioner through rounds of tortuous litigation and only after this Court issued notice in a Contempt Petition filed by the Petitioner. The Petitioner filed the present application under Section 33-C(2) for interest at 12 per cent per annum for the period 30th September, 1992 to 14th March, 2003.

3. Mr.Patil, the learned counsel appearing on behalf of the Respondent opposed the Petitioner’s application for interest on the following grounds :-

i). The application under Section 33-C(2) was filed after considerable delay.

- ii). The application is not maintainable as there was no employer – employee relationship between the parties at the relevant time.
- iii). The Petitioner failed to furnish any evidence in support of the application.
- iv). The application is barred by res-judicata and/or principles analogous thereto.
- v). There is no legal basis for the grant of interest.

I have answered each of the submissions in the negative, against the Respondent.

4. Mr.Patil's fifth defence raises a question of law of some importance. The question of law that arises is whether the Labour Court has power under Section 33-C(2) to order an employer to pay the employee interest for the period between the date of an order of a Court or Tribunal or authority for payment and the date of payment.

I have answered the question in the affirmative upholding the claim for interest in such cases on four grounds - under Sections 3(1) (a) and (b) and 4 of the Interest Act, 1978, and in exercise of powers

under Article 226 of the Constitution of India. A view to the contrary would lead to a total miscarriage of justice and disastrous consequences not merely in this matter but for bona-fide and innocent employees in general. It would put a premium on an employer disregarding orders of Courts, Tribunals and other authorities. Worse still, it would encourage an employer to refuse payments under such orders for as long as possible, rendering them virtually meaningless.

5(a). The Petitioner's deceased husband had filed an application also under Section 33-C(2) in the year 1989 claiming, *inter alia*, over-time wages. The claim was upheld and the Respondent was directed to compute and pay the same within three months from the date of the order i.e. by 30th December, 1992. The Petitioner requested the Respondent to pay the amounts pursuant to the said order dated 30th September, 1992, orally, as well as in writing. It is not necessary to set out the details of these requests. Suffice it to state that they were not complied with.

(b). The Respondent challenged the order after six years by filing Writ Petition No.1955 of 1998. The Writ Petition was rejected by an order of this court dated 10th February, 2000.

(c) About two years later, the Respondent filed Appeal No.311 of 2002 against the said order. The appeal was dismissed by an order of the Division Bench dated 23rd April, 2002.

(d). Even thereafter the Respondent refused to comply with the order dated 30th September, 1992. The Petitioner was, therefore, constrained to file a Contempt Petition. The same was served on the Respondent. This court issued notice to the Respondent on the Contempt Petition. It is only thereafter that the Respondent paid an amount of Rs.65,781/- on 14th March, 2003 as per the said order dated 30th September, 1992. The amount was, therefore, paid after a delay of almost eleven years.

(e). The Petitioner, therefore, filed the present application under Section 33-C(2) claiming Rs.1,49,750/- being interest on the said sum of Rs.65,781/- at 12 per cent from 30th September, 1992, till payment. The learned Presiding Officer, by the impugned order, dismissed the said application.

6. Mr. Patil, the learned counsel appearing on behalf of the Respondent contended that the present application under section 33-C(2) suffered from gross delay and latches.

7. To uphold this contention would be a traversity of justice. It would put a premium on the entirely unreasonable and, in fact, contumacious conduct of the Respondent in not merely having failed and neglected to comply with the order dated 30th September, 1992, but having wilfully and contumaciously refused to comply with the same despite the fact that the order had been upheld by a learned single Judge and by the Division Bench of this court. It was only under pain of the contempt proceedings that the order was complied with. It is pertinent to note that the present application under Section 33-C(2) was filed on 11th August, 2003, i.e. within five months of the amount having been paid. There is no question, therefore, of the application suffering from delay and latches.

8. Mr. Patil submitted that the application was not maintainable as, on the date on which it was made, the concerned workman was no longer employed by the Respondent.

9. The learned Presiding Officer held that on the date of the present application under Section 33-C(2), there was no workman and employer relationship between the parties as admittedly the workman had retired and was a pensioner of the Respondent. It was, therefore, held that the Petitioner cannot be considered to be a workman within the meaning of Section 33-C(2).

10. The impugned judgment in this regard is contrary to the provisions of Section 33-C(2). If this view is upheld, any application for recovery of money or other benefits under Section 33-C(2) made after the cessation of an employer-employee relationship would have to be dismissed even if the claim was in respect of a period when such a relationship existed. The impugned order is, in fact, contrary to the judgment of the Supreme Court in *National Buildings Construction Corporation Ltd. Vs. Pritam Singh Gill & ors.*, (1972) 2 SCC 1 = 1972 Labour Industrial Cases, 857. Paragraph 12 of the judgment reads as under:

“12. Now, it is noteworthy that Section 2 of the Act, which is the definition section begins, as is usual with

most of the definition sections, with the clause, “unless there is anything repugnant in the subject or context”. This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to the word “workman” as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject-matter. The context and the subject-matter in connection with which the word “workman” is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word “workman” is obvious because all parts of the Act have to be in harmony with the statutory intent. Keeping this in mind we may turn to the purpose and object of Section 33-C of the Act. This section was enacted for the purpose of enabling individual workman to implement, enforce or execute their existing individual rights against their employers without being compelled to have recourse to Section 10 by raising disputes and securing a reference which is obviously a lengthy process. Section 33-C of the Act has accordingly been described as a provision which clothes the Labour Court with the powers similar to those of an executing court so that the workman concerned receives speedy relief in respect of his existing individual rights. The primary purpose of the section being to provide the aggrieved workman with a forum similar to the executing courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief. It may appropriately be pointed out that the mischief which Section 33-C was designed to suppress was the difficulties faced by individual workmen in getting relief in respect of their existing rights without having resort to Section 10 of the Act. To accept the argument of the appellant, it would always be open to an unfair, unsympathetic and unscrupulous employer to terminate the services of his employee in order to deprive him of the benefit conferred by Section 33-C and compel him to have resort to the lengthy procedure by way of reference under Section 10 of the

Act thereby defeating the very purpose and object of enacting this provision. This, in our view, quite clearly brings out the repugnancy visualised in the opening part of Section 2 of the Act and such a position could hardly have been contemplated by the Legislature. In order to remove this repugnancy Section 33-C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term “workman” as used in Section 33-C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act. We are, therefore, inclined to agree with the view taken by the Madras decisions and we approve of their approach. According to Shri Malhotra, in cases where there is no dispute about the employee’s right which is not denied, he will be entitled to file a suit. Whether or not the right of suit can be claimed by the employee, we are not persuaded on the basis of this argument to accept the construction canvassed on behalf of the appellant and deny to a dismissed employee the benefit of speedy remedy under Section 33-C(2) of the Act.”

11. The ratio of this judgment would apply to a claim for interest on the amount awarded or due to a workman, even though it is for a period after the applicant ceases to be a workman so long as it is in respect of a principal sum which arose on account of or relates to his relationship as an industrial workman with his employer. In other words, an application for interest under section 33-C(2), in such a

case, would be maintainable if it pertains to the principal sum which accrued when the person was a workman.

Such an application would also be maintainable for compound interest for even when the interest is compounded, it still in effect relates to the principal amount. Interest is always *qua* a principal amount. That the component of the principal amount may differ from case to case. For instance where compound interest is payable it will also include the previous interest. It makes no difference. The interest is relatable to and in respect of a right to receive wages or other benefits during the subsistence of the employer-employee relationship to wit during the period the applicant was a workman.

12. Any other view would lead to a totally unjust and undesirable result where the workman would be entitled to maintain an application under Section 33-C(2) only upto the period of his employment, but not thereafter despite the fact that the claim arises in respect of, in relation to or in connection with a period during which he was a workman. It would also lead to an absurd result requiring an employee to file proceedings before the Labour Court for the principal sum and

possibly a part of the interest and a civil suit for the interest for the period after he ceased to be a workman.

13. Mr. Patil submitted the application was liable to be dismissed as no evidence had been led by the Petitioner in support of the application under Section 33-C(2).

14. This submission is without any substance. The facts are admitted. There was nothing that was required to be proved. It is based on the above facts alone that the application was made. The Respondent has not and indeed cannot deny the fact of the order dated 30th September, 1992, the orders of this court and the date on which the payment was finally made.

15. The Respondent's contended that the claim was barred by *res judicata* and/or principles analogous thereto. The claim in the first application under Section 33-C(2) pertained to the Petitioner's deceased husband's wages for the period 1980 to 1987. No interest was claimed in that application. It was, accordingly, submitted that the claim for interest had been impliedly abandoned.

16. Section 33-C of the ID Act 1947, is as follows:

“33-C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]:

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as

may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation. — In this section “Labour Court” includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]”

17. A decree in a civil suit must be executed under the provisions of Order XXI of the Code of Civil Procedure. In a civil suit if the decree does not provide for interest, the executing court cannot grant interest as the provisions of Order XXI of the CPC do not entitle the executing court to confer any benefit upon the decree-holder, other than that stated in the decree itself.

18. That the Executing Court cannot grant interest in execution of a decree under Order XXI of The Civil Procedure Code, 1908, however, does not bar a separate, independent action for interest for

the delay in payment of the decretal amount. The delay in payment of the decretal amount furnishes an independent cause of action for payment of interest on account of such delay. A Plaintiff/Claimant is not bound to presume or proceed in the first action on the basis that even if it is decreed/allowed, the judgment debtor will not honour the order by refusing to make payment thereunder or even by delaying the payment thereof.

19. It is indeed true that more often than not, interest is claimed in the first action itself not merely for the period upto the date of the filing of the action and *pendente lite*, but also for future interest and that the Court or Tribunal has the power to grant the same. That such a claim for future interest is the normal practice at least in civil suits is well established. The same, however, does not preclude a party from claiming interest by a separate action for the delay in payment of the amount adjudicated, ordered or decreed to be paid.

20. An action only for interest is not unusual. Indeed, Section 3 of the Interest Act, 1978, expressly recognizes such an action. Section 3 reads as under :

“3. Power of court to allow interest .

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

The words “....or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made” refers to actions only for interest on a debt or damages even where the same have been paid.

21. This line of reasoning would apply equally to an application under Section 33-C(2) of the Industrial Disputes Act as it would to any other action.

22. This brings me to a consideration of the legal basis on which interest may be awarded in the present matter. Mr. Patil submitted there was none. I do not agree.

23. Mr. Shaikh, the learned counsel appearing on behalf of the Petitioner relied upon a judgment of a Division Bench of the High Court of Punjab & Haryana in the case of *State of Haryana vs. Hisam Singh and anr.*, 1999 II LLJ 335. In this case, the services of the Respondents were terminated. In the industrial dispute raised by the Respondent, the Labour Court ordered reinstatement with full back wages and continuity of service. The Petitioner reinstated the Respondents, but paid the back wages only after a period of four years and eleven months. The Respondents, therefore, filed a Petition under Section 33-C(2) of the Industrial Disputes Act for interest during this period.

It was contended that the Labour Court had no jurisdiction to award interest on account of the delay in payment of back wages. The Division Bench held thus :-

“The contention is wholly misconceived. In pursuance to the award dated August 27, 1990 the Management should have made the payment of back wages within a reasonable time. It took about seven months to reinstate the workman and thereafter almost five years were spent in paying the back wages. During this long interval the petitioner kept the money which was rightfully due to the respondent. No justification for such an inordinately long

delay in payment has been even offered at the hearing of the case. In such a situation, we find that the Labour Court was amply justified in upholding the claim of the respondent-workman. If the technical plea raised on behalf of the petitioner is accepted, it would lead to grave miscarriage of justice. It would allow the petitioner to take advantage of its own wrong. It would cause (un)avoidable hardship to the workman. Such is not the spirit of the industrial law. Thus, no ground for interference under Article 226 of the Constitution is made out.”

24. Mr. Shaikh also relied upon the judgment of a learned single Judge of this court in *Swan Mills Ltd. vs. Sakharam Dhondu Panchal & anr.*, 2004 (12) LJSOFT 56 = 2004 III CLR 870 where it was held :-

“12. The next issue is awarding of interest. In the instant case, no interest has been awarded on the amount of wages awarded. What the Labour Court has done is merely to award interest subsequent to the orders in the event, the employer fails to pay the amount determined. It is therefore, not a case of awarding interest but merely awarding an interest on the amount awarded on failure to pay the amount already quantified. The learned counsel has placed reliance in the judgment of *Payal Electronics Vs. Arun Vasant Pawar and anr.* 2002 III CLR 328 to contend that the Labour Court has no jurisdiction and power to grant any interest on the determined amount as due from the employer. In that case, interest at the rate of 15% p.a. was ordered to be paid on unpaid over time wages. The learned Single Judge of this Court proceeded to hold that there was no existing right to get the interest on the amount of dues and as the Executing Court, the labour court cannot add anything more than the amount of money due. There can be no dispute with the

proposition in the said judgment. As an Executing Court what the court can do is to execute the awards/order and not grant anything beyond the said order. In the instant case also no interest has been awarded on the unpaid amount. It is only on failure to pay the amount that interest has been awarded from a future date. Though the principles of Section 34 of the C.P.C. cannot be said to be conferred on the Labour Court, still it will be open to a Civil Court and the Labour Court is a civil court to award the interest on the amount already computed and not paid from the date of this order in terms of Section 34 of C.P.C. That is what the Labour Court has done. It therefore, cannot be said that the same is without jurisdiction. That contention must therefore, be rejected." (emphasis supplied)

25. The judgment is binding on me. I am, in any event, in respectful agreement with the judgment for the reasons I have stated earlier insofar as it relates to the maintainability of a claim for future interest. In the case before me also, the interest claimed is not on the amounts unpaid upto the date of the order of the Labour Court dated 30th September, 1992, but in respect of the amounts awarded from a future date. Future interest could always have been granted when the order dated 30th September, 1992, was passed. For the reasons stated earlier, there is nothing that prevented the Petitioner from claiming it by a separate application. The Petitioner was not bound to presume that the Respondent would not honour an order of a competent Court.

Indeed the Petitioner, like any other citizen, is justified in assuming that orders would be obeyed.

26. I am in respectful agreement with the conclusion of the Division Bench of the Punjab & Haryana High Court and of the learned single Judge of this Court. I would, however, furnish my reasons for the same.

27. The claim for interest is, as I said earlier, maintainable under sub-clauses (a) and (b) of sub-section (1) of Section 3 and under Section 4 of the Interest Act, 1978. A Court in exercise of powers under Article 226 can also grant interest in a case such as this.

Section 3(1) of the Interest Act, 1978 is as under :-

“3. Power of court to allow interest .

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings ;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings :

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period after such repayment.”

28. Firstly, the Interest Act, 1978 is applicable to a Labour Court and an Industrial Tribunal under the ID Act.

(A). Section 3 of the Interest Act refers to the powers of “the Court”. Section 2(a) of this Act defines “court” to include a Tribunal and an Arbitrator. The ambit of the term “court” in the Interest Act is, therefore, wide. There is no warrant for excluding a Labour Court from the ambit of that expression in the Interest Act. Thus, a Labour Court is entitled to exercise power by awarding interest under the Interest Act.

(B). Secondly, the application in this case was a proceeding in which a claim for interest in respect of a debt already paid was made. The amount directed to be paid by the order dated 30th September, 1992, was a debt. Section 2(c) defines a debt thus :-

“debt” means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;”.

The claim for interest in this case was not in respect of a judgment debt.

29. I have come to the conclusion that the Petitioner is entitled to interest from 30th December, 1992 itself in view of the provisions of Section 3(1)(a). The order dated 30th September, 1992, falls within the ambit of the expression “written instrument” in Section 3(1)(a) of the Interest Act. There is neither any warrant nor justification for limiting the scope of this expression. In *Savitribai vs. A. Radhakishan AIR 1948 Nagpur 49*, a Division Bench held that a decree is an instrument within the meaning of the Interest Act, 1839. Paragraph 5 of the judgment reads as under :

“5. The only question which arises here and which did not arise in the other cases relates to the plaintiff’s claim for interest. It is relevant to note that interest was decreed in the previous suits which the plaintiff was forced to file. It is said that this operates as *res judicata*, but we need not proceed on that ground because we agree with 15 Luck. 537, that the Interest Act of 1839 applies. As the learned Judges said there :

“The claim in the present case is for a certain sum payable at a certain time that is monthly allowance of quzera impliedly payable at some time in every month for that month,”

and again,

“In our opinion a monthly maintenance or allowance payable under a compromise in a suit comes within the scope of this provision.”

It was argued that a decree is not an “instrument” within the meaning of the Act. We find, however, that the word “instrument” is used in various senses, in some it includes a decree, in others it does not. Thus, S.17(1)(b), Registration Act makes non testamentary “instruments” of the type set out there compulsorily registerable. Sub-section (2) exempts a number of documents, deeds and so forth from the scope of S.17(1)(b), among them certain decrees in sub-cl.(v). There would have been no need to exclude this decrees if the word “instrument” did not cover a decree. It is to be observed that certain compromise decrees are not exempted. Therefore, they are “instruments” for the purpose of the Registration Act. We see no reason why we should limit the use of the word in the Interest Act. Accordingly, we hold that the term is wide enough to cover a decree.”

30. I am in respectful agreement with the judgment. On a parity of reasoning I would apply the ratio of the judgment to all orders of Courts, Tribunals or other authorities, including a Labour Court exercising powers under Section 33-C(2).

31. To the illustration furnished by the Nagpur High Court, I would only add the provisions of the Bombay Stamp Act.

(A). Under Section 3 of the Bombay Stamp Act, every instrument mentioned in Schedule I, except those specified therein shall be chargeable with duty of the amount indicated in Schedule I. Article 25 of Schedule I refers to a conveyance other than a transfer charged or exempted under Article 59. Clause (da) of Article 25 relates *inter alia*, to the order of a High Court in respect of the amalgamation or reconstruction of companies under Section 394 of the Companies Act 1956. Thus, an order of a Court has been considered by the Legislature to be an instrument.

(B). Article 60 Schedule I is as under :-

“60. TRANSFER OF LEASE by way of assignment and not by way of under lease or by way of decree or final order passed by any Civil Court or any Revenue Officer.”

Here again, a decree passed by a civil Court or even an order of a Revenue Officer has been considered by the Legislature to be an instrument. This is so, both by considering such instruments as being liable to stamp duty as also excluding them from the necessity of being stamped.

32. In the circumstances, the term “instrument” in Section 3(1)(a) of the Interest Act is wide enough to include a decision by the Labour Court under Section 33-C(2). Accordingly, interest would be payable on the said sum from 30th December, 1992 till payment and/or realisation. There is no dispute regarding the computation.

33. Even assuming that the order dated 30th September, 1992 is not a written instrument and the Petitioner is therefore not entitled to payment of interest under Section 3(1)(a), she would be entitled to the same under Section 3(1)(b).

By the order dated 30th September, 1992 the Labour Court upheld the Petitioner’s deceased husband’s claim and directed the payment thereof within three months i.e. on or before 30th December, 1992. The Respondent failed to do so. By a letter dated 26th February, 1996, the Petitioner’s advocate called upon the Respondent to pay the amount pursuant to the order dated 30th September, 1992 with interest at 12 per cent per annum. The Petitioner would, therefore, be entitled to interest under Section 3(1)(b) if Section 3(1)(a) did not apply. Thus,

the Petitioner would, in any event, be entitled to interest, at least from 26th February, 1996 under Section 3(1)(b).

However, as I have held earlier, the Petitioner is entitled to interest under Section 3(1)(a).

34. The Petitioner's claim is also sustainable under Section 4 of the Interest Act which reads thus :-

4. Interest payable under certain enactments.—(1)

Notwithstanding anything contained in Section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely:

—
(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.

35. The Petitioner's claim for interest would fall within the ambit of the words "or other rule of law" in Section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to Section 1 which reads : "Provided that interest shall be payable in all cases in which it is now payable by law." Interest was payable by law under that Act in equity. This was recognized in a series of judgments. For instance in *Trojan & Co. vs. Nagappa Chettiar* 1953 SCR 789. The Supreme Court, in paragraph 23 observed that it was well settled that interest is allowed by a court of equity in the case of money obtained or retained by fraud. Interest was, therefore, awarded in equity.

36. The position is no different under the Interest Act, 1978. The words, in Section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by our courts in equity as well as on principles analogous to Section 34 of the Code of Civil Procedure on the basis that Section 34 is based upon principles of justice, equity and good conscience.

37. It is important to note that there is no legal provision or any other rule of law that prohibits the grant of interest for the period during which a debtor fails to comply with an order of payment passed by a Court, Tribunal or any other competent authority. This enables, therefore, the application of the common law principles relating to equity.

38. In Hanbury & Maudsley Modern Equity, 13th Edition, it is noted at page 33 :-

“As we shall see, it is in the field of remedies that equity displays perhaps the greatest inventiveness and capacity for development, providing relief in new situations as they arise.”

The foot note to this commentary refers to Anton, Piller and Mareva injunctions. The categories of equitable interest do not appear to be closed despite the on-going debate as to whether new ones ought to be created or not. Commentaries on equity suggest that the principles of equity have constantly developed and found new fields of application. (Hanbury & Maudsley Modern Equity, 13th Edition - Page 44).

39. I would base the exercise of this power on the maxim that equity will not suffer a wrong to be without a remedy and will intervene to protect a right which is not enforceable at law as a result of the absence of a statutory provision. I am satisfied about the suitability for the enforcement of this right by a Court of equity.

40. There is no statute that bars the grant of interest in such circumstances. There is no question, therefore, of the exercise of equity in this case departing from statute law or refusing to follow any other provision of law. There is no departure, therefore, from the other maxim of equity : equity follows the law.

41. Reported cases indicate how principles of equity have been invoked to grant interest even in the absence of a statutory provision in that regard.

42. In *Sovintrog (India) Ltd. vs. State Bank of India, New Delhi* (1999) 6 SCC 406, Supreme Court held as under :-

“6. Relying upon the province of Section 34 of the Civil Procedure Code, the learned counsel for the appellant submitted that the appellant was entitled to the payment of interest at the rate at which moneys are lent or advanced by Nationalised Banks in relation to commercial transactions. Referring to IA No.2 filed in this Court and Banking Law and Practice in India issued in 1991, she had contended that the appellant was entitled to the payment of interest minimum at the rate of 19.4 per cent per annum. The general submission made in this behalf cannot be accepted in view of the provision of Section 14 of the Act. There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commissions to also grant interest approximately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in *Satinder Singh v. Umrao Singh* (1961) 3 SCR 676. Referring to the province of the Interest Act of 1839, in relation to the compulsory acquisition of land where no specific provision is made for grant for awarding the interest, the Court held:

“In this connection we may incidentally refer to Interest Act, 1839 (XXXII of 1839). Section 2 of this Act confers power on the court to allow interest in cases specified therein, but the proviso to the said section makes it clear that interest shall be payable in all cases in which it is now payable by law. In other words, the operative provisions of Section 1 of the said Act do not mean that where interest was otherwise payable

by law court's power to award such interest is taken away. The power to award interest on equitable grounds or under any other provisions of law is expressly saved by the proviso to Section 1. This question was considered by the Privy Council in *Bengal Nagpur Rly. Co. Ltd. v. Ruttanji Ramji* AIR 1938 PC 67. Referring to the proviso to Section 1 of the Act the Privy Council observed 'this proviso applies to cases in which the court of equity exercises its jurisdiction to allow interest.' We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right; and so, the proviso to Section 1 of the Interest Act saves the said right. We must accordingly hold that the High Court was in error in rejecting the claimants' case for the payment of interest on compensation amount, and so we direct that the said amount should carry interest at 4% per annum from the date when Respondent 2 took possession of the claimants' land to the date on which it deposited or paid the amount of compensation to them.

To the same effect is the judgment in *Laxmichand v. Indore Improvement Trust* (1975) 1 SCC 565. The State Commission as well as the National Commission were, therefore, justified in awarding the interest to the appellant but in the circumstances of the case we feel that grant of interest at the rate of 12% was inadequate as admittedly the appellant was deprived of the user of a sum of Rs one lakh for over a period of seven years. During the aforesaid period, the appellant had to suffer the winding-up proceedings under the Companies Act, allegedly on the ground of financial crunch. We are of the opinion that awarding interest at the rate of 15 per cent per annum would have served the ends of justice."

43. In *Ghaziabad Development Authority vs. Union of India* (2000)

6 SCC 113, the Supreme Court held in paragraph 9 thus:

“9. The next question is the award of interest and the rate thereof. It is true that the terms of the brochure issued by the Authority relevant to any of the cases under appeal and the correspondence between the parties do not make out an express or implied contract for payment of interest by the Authority to the claimants. Any provision contained in the Consumer Protection Act, 1986, the Monopolies and Restrictive Trade Practices Act, 1969 and the U.P. Urban Planning and Development Act, 1973 enabling the award of such interest has not been brought to our notice. The learned counsel for the claimants have placed reliance on a recent decision of this Court in *Sovintorg (India) Ltd. v. State Bank of India* (1999) 6 SCC 406, wherein in similar circumstances the National Consumer Disputes Redressal Commission directed the amount deposited by the claimants to be returned with interest at the rate of 12 per cent per annum. This Court enhanced the rate of interest to 15 per cent per annum. To sustain the direction for payment of interest reliance was placed on behalf of the claimants on Section 34 CPC and payment of interest at the rate at which moneys are lent or advanced by national banks in relation to commercial transactions was demanded. This Court did not agree.

44. In *South Eastern Coalfields Ltd. vs. State of Madhya Pradesh*

(2003) 8 SCC 661 in paragraphs 21 and 22 the Supreme Court held

thus :-

21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see *Chitty on Contracts*, 1999 Edn., Vol. II, Para 38-248 at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many. (emphasis supplied)

22. We may refer to the decision of this Court in *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J., has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.

45. On a parity of reasoning, I would readily invoke the equitable jurisdiction in awarding interest where a debtor refuses to pay or delays in paying money directed to be paid by an order of a Court, Tribunal or other authority.

46. Mr. Patil relied upon a judgment of a learned single Judge of the Madras High Court in the case of *Management of Nathan's Press, Madras vs. K. Krishnan & ors.* 1988 Lab. I.C., 700. Before I refer to

this judgment, it would be convenient to refer to the judgment of another learned single Judge of the Madras High Court which was relied upon in this judgment viz. *Krishnamurthy vs. The "Mail"* (1964) 2 Lab. LJ 88. This case is entirely different from the one before me. The Labour Court in that case awarded interest on the amounts adjudged. The question in that case, therefore, pertained to the power of the Labour Court to grant interest in an application under Section 33-C on the amounts adjudged by the Labour Court till the date of the Award. From the judgment, it appears that the Labour Court allowed interest at 6% per annum for a period of five years and one month in each case indicating that the interest was considered for the period upto the date of the order under Section 33-C(2). The case before me, however, relates to future interest on the amounts awarded. The case is, therefore, distinguishable.

47. In *Management of Nathan's Press, Madras vs. K. Krishnan & ors.*, the learned single Judge followed the judgment in *Krishnamurthy's* case. In this case, an Award was passed directing the Petitioner to reinstate the first Respondent with full back wages with continuity of service etc. The Petitioner reinstated the first

Respondent, but did not pay back wages and other benefits. The first Respondent filed a Claim Petition under Section 33-C(2) claiming various amounts as also interest at 6% per annum. Interest was granted on the amounts awarded. It was contended that the Labour Court is not a Civil Court and does not possess the same power as a Civil Court on the question of interest. The first Award itself did not contain any stipulation as to interest. It was the amount under that Award which was sought to be recovered by the further application under Section 33-C(2). The learned Judge held in paragraph 4 as under :

“4.

The Labour court, while making the computation has got only role of an executing court, and it cannot go beyond the award unless the question is incidental to working the reliefs on the basis of the award. The heads of claims could be based only on the award, and in the absence of any provision for payment of interest in the award, there could not be any claim for such interest and countenancing thereof by the second respondent in the present case. The claim for interest could not be stated to be incidental to computation of the benefits given under the award. I find the view expressed in Krishnamurthy v. The Mail (1964) 2 Lab L J 88 (Mad) has been taken note of and followed by a single Judge of the High Court of Delhi in Union of India v. Central Govt. Labour Court (1985) 86 FJR 16. In this view, the award of interest by the second respondent has got to be discountenanced. Accordingly, this writ petition is allowed to this limited

extent in the sense in the impugned order passed by the second respondent, the sum of Rs.843.86 representing leave salary for national and festival holidays and a sum of Rs.350 representing the interest shall stand deleted. I make no order as to costs in this writ petition.”

The judgment supports the Respondent’s case. I am, with respect, however, for the above reasons, unable to agree with this judgment at least insofar as it pertains to future interest. It is also contrary to the judgment of this Court in *Swan Mills Ltd.* (supra)

48. I have also held in the Petitioner’s favour on the basis of a judgment of a Division Bench of this Court in the case of *Dilip T. Khandar vs. State of Maharashtra & ors., 2006 (2) LJSOFT, 12 = 2006 1 Bom.C.R. 721.*

In that case, the complaints filed by the workmen under the MRTU & PULP Act were allowed and recovery certificates were issued by the Industrial Court for recovery of salary and other reliefs. The Collector granted the employer instalments and did not recover interest. It was contended on behalf of the Respondents that the Labour Court/Industrial Court had not directed payment of interest

and hence there was no clause relating to payment of interest in the recovery certificates. The Division Bench referred to Section 50 of the MRTU & PULP Act and expressly observed that the provisions thereof were similar to Section 33-C of the ID Act. Section 50 of the MRTU & PULP Act also provides that where money is due to an employee from an employer in the circumstances mentioned therein, the court shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the manner as an arrear of land revenue. The Division Bench rejected the contention that merely because the Labour Court/Industrial Court had not directed payment of interest and the recovery certificate also did not refer to interest, no interest was payable. The judgment was also based on Section 33-C(1) read with Section 267 of the Maharashtra Land Revenue Code.

49. Subsequently, I discovered that an application for review was made in that matter on the ground that the Division Bench had passed its judgment on the provisions of a proposed amendment to Section 267 of the Maharashtra Land Revenue Code. The Ordinance containing the purported amendment had lapsed and the amendment never came into effect.

50. I, therefore, placed the matter for directions and invited the attention of both the learned Counsel to this fact as well as to the judgment of the Division Bench dated 31st March, 2006, dismissing the Review Petition on the ground that the judgment had granted interest, nor merely on the basis of the proposed amendment to Section 267, but also in exercise of the powers of the Division Bench under Article 226 of the Constitution of India.

51. The High Court thus has power under Article 226 to grant interest in appropriate cases. The Division Bench exercised this power in a similar case. Cases such as these are fit matters to exercise such power and I accordingly do so.

52. I note that once again the application has not sought future interest. It is not possible, therefore, for me to grant future interest from the date of the application viz. 11th August, 2003, till the date hereof. The Petitioner is at liberty to make a further application for the same.

53. In the result, Rule is made absolute in terms of prayer (a). The Respondent shall pay the Petitioner the said amounts on or before 30th June, 2010.

The Respondent shall also pay costs fixed at Rs.1,500/- to the Petitioner on or before 30th June, 2010.